IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B CRIMINAL APPEAL NO. 760/2001
(RAGHUVEER @ RAGHUNATH VS STATE)

JUDGMENT

APPEAL UNDER SECTION 374(2) CR.P.C. AGAINST THE JUDGMENT AND ORDER DATED 11.10.2001 PASSED BY LEARNED ADDITIONAL SESSIONS JUDGE (FAST TRACK), HANUMANGARH IN SESSIONS CASE NO. 70/2001

Date : 08.12.2004

HON'BLE MR. B. PRASAD, J.
HON'BLE MR. GOVIND MATHUR, J.

Mr. Mridul Jain alongwith Mr. Krishna Chand
for the appellant.
Mr. Vishnu Kachhwaha, P.P.

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BY THE COURT :-

The present appeal arises out of the decision of the Court of Additional Sessions Judge (Fast Track), Hanumagarh in Sessions Case No. 70/2001 dated 11.10.2001 whereby, the learned trial court has convicted the accused appellant under Section 302 I.P.C.and has sentenced him to life imprisonment and a fine of Rs. 100/-, in default of payment of fine, an additional six months rigorous imprisonment has been awarded.

Briefly stated, the facts of the case are that one Smt. Rani W/o Raj Kumar lodged a First Information Report at P.S. Hanumangarh. According to the First Information Report, the brother-in-law of the first

informant Late Shri Pawan Kumar, deceased alongwith first informant and mother-in-law were taking tea at home. Pawan Kumar after taking tea went out of the house. The first informant was combing her hair while Pawan Kumar went out. Deceased Pawan Kumar was assaulted by accused with tire rod twice. Pawan Kumar fell on the ground and started bleeding. She her mother-in-law, her husband and father-in-law carried the injured Pawan Kumar to the hospital. He was un-conscious. Pawan Kumar was referred for treatment to Bikaner by the doctors. After that the first informant came to the police station and lodged the First Information Report. On this first information report, the investigation commenced. After investigation ws complete, S.H.O Police Station Hanumangarh Jun. Filed charge-sheet against the accused person before the court of Judicial Magistrate, Hanumangarh. After commitment, the case ultimately came to be tried by the trial court who decided the same and convicted the accused appellant.

At the trial, the prosecution examined 18 witnesses and tendered 29 documents in evidence. The accused was evidenced under Section 313 Cr.P.C. His case was that of denial. No evidence was produced in defence. The trial court recorded that this was a case of one accused one convict. The occurrence being watched by many eye-witnesses, the principal witness being the first informant Rani. It was canvassed before the trial court that one of the eye-witnesses has turned hostile. All the produced eye-witnesses were named in the First Information Report and first informant PW/7 Rani could not have seen the occurrence. According to the defence statement , PW/7 Rani was not

worthy of believing because she has improved upon her statement from Ex.D/5 and Ex.D/10. Trial court concluded that the improvement in the statement of PW/7 Rani are of no consequence. They are mere details and their non-mention in the F.I.R is of no consequence because the main story in the first information report is being narrated and First Information Report is not encyclopedia. Therefore, the facts regarding consumption of tea , arrival of Raghuveer, intervention of father-in-law and mother-in-law are of no consequence. The basic story has remain intact. The trial court was pursued that PW/7 Rani is a truthful witness and her statement cannot be considered to be of any lesser value than one which stands available about the other eye-witnesses. The trial court has found that whatever little improvements have been canvassed are of in-significant nature. The substratum of the prosecution story had remained intact and the same having not been shaken, the case is being held to be proved.

Assailing the judgment of the trial court, the learned counsel for the accused submitted that if the story of the prosecution is judged in the light of the site plan, then it cannot be deduced that PW/7 was in a position to observe the occurrence as alleged.

We have examined the statement of PW/7 Rani. In her cross-examination, she has not been shaken. The defence has not directed any such question in her cross-examination so as to make her a witness who would not be of such worth which would deviate the eye-witness of the nature which she

is. When it is found that nothing has come on record of the nature which can be considered to shake the testimony of the eye-witnesses. The occurrence having taken place just after Pawan Kumar having gone out from the house immediately

(GOVIND MATHUR), J. **(B. PRASAD), J.**

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